

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>ANTHONY GAINES,</b>	:	
<b>Plaintiff,</b>	:	
	:	
<b>v.</b>	:	<b>Case No. 2:22-cv-3853-JDW</b>
	:	
<b>CITY OF PHILADELPHIA, et al.,</b>	:	
<b>Defendants.</b>	:	

**ORDER**

AND NOW, this 21st day of October, 2022, upon consideration of Plaintiff Anthony Gaines's Motion To Proceed *In Forma Pauperis* (ECF No. 6), his *pro se* Complaint (ECF No. 2), and Motion For Emergency Relief (ECF No. 5), it is **ORDERED** as follows.

1. Plaintiff's Motion To Proceed *In Forma Pauperis* (ECF No. 6) is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Anthony Gaines, # 682284, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of Philadelphia Industrial Correctional Center or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Gaines's inmate account; or (b) the average monthly balance in Mr. Gaines's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket

number for this case. In each succeeding month when the amount in Mr. Gaines's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. Gaines's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court shall send a copy of this Order to the Warden of Philadelphia Industrial Correctional Center.

4. The Complaint is deemed filed.

5. The Complaint is **DISMISSED IN PART WITH PREJUDICE AND IN PART WITHOUT PREJUDICE** for the reasons stated in the Court's Memorandum, as follows:

a. Mr. Gaines's access-to-courts claim is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

b. All other federal constitutional claims are **DISMISSED WITH PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii);

c. All state law claims are **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction.

d. All claims against "Office of City Counsel," the Philadelphia Department of Prisons and Philadelphia Prison System, and the Philadelphia Prison "Department of Classification Movements & Records" are **DISMISSED WITH PREJUDICE**.

6. The Clerk of Court shall terminate "Office of City Counsel," the Philadelphia Department of Prisons and Philadelphia Prison System, and the Philadelphia Prison "Department of Classification Movements & Records" as Defendants.

7. Mr. Gaines's Motion For Emergency Relief (ECF No. 5) is **DENIED**.

8. Mr. Gaines may file an amended complaint on or before November 23, 2022. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Mr. Gaines's claims against each defendant. The amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in this case to state a claim. When drafting his amended complaint, Mr. Gaines should be mindful of the Court's reasons for dismissing his access-to-courts claim in his initial Complaint as explained in the Court's Memorandum. Upon the filing of an amended complaint, the Clerk shall not make service until the Court orders.

9. The Clerk of Court shall send Mr. Gaines a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Mr. Gaines may use this form to file his amended complaint if he chooses to do so.

10. If Mr. Gaines does not wish to amend his Complaint and instead intends to stand on his Complaint as originally pled, he may file a notice with the Court on or before November 23, 2022, stating that intent, at which time the Court will issue a final order

dismissing the case. Any such notice should be titled "Notice to Stand on Complaint," and shall include the civil action number for this case.

11. If Mr. Gaines fails to file any response to this Order, the Court will conclude that he intends to stand on his Complaint and will issue a final order dismissing this case.

**BY THE COURT:**

/s/ Joshua D. Wolson

**JOSHUA D. WOLSON, J.**